IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: The Owners, Strata Plan VR320 v. Day, 2023 BCSC 364

Date: 20230313
Docket: S-220530
Registry: Vancouver

Between:

The Owners, Strata Plan VR320

Petitioner

And

Daniel Day and The Civil Resolution Tribunal

Respondents

Before: The Honourable Justice Majawa

Reasons for Judgment

Counsel for the Petitioner:	B.K. Shoker
Counsel for the Respondent, Daniel Day:	J.A. Hutchinson M. Bringeland
Place and Date of Hearing:	Vancouver, B.C. November 22, 2022
Place and Date of Judgment:	Vancouver, B.C. March 13, 2023

2023 BCSC 364 (CanLII)

Table of Contents

OVERVIEW **3**
FACTS AND SUMMARY OF DISPUTE **3**
STANDARD OF REVIEW **5**
PARTIES' POSITIONS **7**
DISCUSSION **8**
Mischaracterization of Strata's Position 8
Waiver of Hearing Requirement 9
Special Levy Approval Date and Reimbursement 12
The First AGM was Invalid 12
The Special Levy Became Due and Payable After the Second AGM 17
DISPOSITION **20**

2023 BCSC 364 (CanLII)

OVERVIEW

[1] This action involves a dispute between the petitioner, The Owners, Strata Plan VR320 (the "Strata"), and Daniel Day, a former owner of strata lot 3 ("SL3").

[2] The Strata seeks a judicial review of the Civil Resolution Tribunal's (the "CRT") decision delivered on January 7, 2022, and indexed at 2022 BCCRT 11 (the "Decision"), which ordered special levy funds to be returned to Mr. Day.

[3] The questions to be resolved on this judicial review are:

a) Was the CRT patently unreasonable in inferring from Mr. Day's conduct that he had requested a waiver of the hearing requirement?

b) Was the CRT patently unreasonable in finding the proposed special levy not binding at the first annual general meeting, and consequently ordering the Strata to reimburse the special levy payments to Mr. Day?

[4] For the reasons that follow, the answer to both questions is "no" and the Strata's petition is dismissed.

FACTS AND SUMMARY OF DISPUTE

[5] The Strata is a residential strata corporation in Vancouver, incorporated under the *Strata Property Act*, S.B.C. 1998, c. 43 (the "*SPA*").

[6] The Strata held a virtual town hall to facilitate discussion regarding resolutions to be put forth at an upcoming annual general meeting ("AGM").

[7] Notice for the AGM was delivered on February 3, 2021. At that time, an order of the Provincial Health Officer was in place, restricting gatherings to up to 50 persons owing to the COVID-19 pandemic. The notice contained instructions for owners to vote on the special levy using a "restricted proxy ballot", as it was described in the notice. Owners were required to submit proxy votes to either the

2023 BCSC 364 (CanLII)

Strata president or building manager, and were encouraged not to physically attend the AGM due to the pandemic. No option for virtual attendance was given.

[8] On February 25, 2021, the Strata held the AGM (the "First AGM"). The Strata sought to approve a special levy of $2,250,000 to fund a garden membrane (the "First Resolution"). The special levy was passed, and Mr. Day was compelled to pay $18,700.20 over three instalments (the "Payment").

[9] The Strata president subsequently sent an undated letter to the owners, explaining that the Strata had sought a legal opinion following several owners' challenges regarding the legitimacy of the First AGM (the "President's Letter"). The Strata's lawyer opined that if the matter went before the CRT, the First AGM may be declared invalid, so "to remedy this and as a matter of correction", the Strata would hold a second meeting. The President's Letter further provided that the Strata would not take any enforcement actions to collect monies from owners who had yet to pay the special levy, and that no fines, penalties, or interest would be applied.

[10] On May 1, 2021, the Strata withdrew $6,233.40 from Mr. Day's bank account as payment for the first instalment of the special levy.

[11] On May 12, 2021, Mr. Day emailed the Strata, requesting a meeting with the Strata president, Ms. Barnes, seeking a return of the first instalment of the Payment, and advising that if the funds were not returned, he would commence legal proceedings against the Strata. A phone call between the Strata president and Mr. Day took place that same day. Mr. Day did not request a hearing with the strata council during that phone call. The next day, Mr. Day phoned Ms. Barnes again and advised her that he would file a CRT complaint. On May 21, 2021, the Strata refunded the first instalment to Mr. Day.

[12] On May 31, 2021, Mr. Day completed the sale of SL3 to a third party.

[13] On July 15, 2021, the Strata held a second annual general meeting (the "Second AGM"). Another resolution regarding the special levy was held and passed at the Second AGM (the "Second Resolution").

2023 BCSC 364 (CanLII)

[14] The Strata took the position that the Second Resolution ratified the First Resolution, making the special levy payment due on February 25, 2021. The Strata then deducted the Payment from the proceeds of the sale of SL3.

[15] As a result, Mr. Day filed a claim with the CRT, seeking an invalidation of the First AGM so the Payment amount would be released to him. The Strata's response to the CRT claim stated that Mr. Day failed to formally request a hearing with the strata council as required under the *SPA*. The Strata claimed that at no time prior to Mr. Day's sale of SL3 was the First Resolution invalidated, as it was retroactively ratified by the Second Resolution, so Mr. Day owed the Strata the entirety of the Payment.

[16] The CRT rendered its Decision on January 7, 2022, inferring from Mr. Day's conduct that he had requested a waiver of the hearing requirement. The CRT determined that the First AGM was not held in compliance with the *SPA*. Therefore, the special levy was not approved until the Second AGM – after Mr. Day had sold his lot. The CRT made the following orders:

> a. Within 30 days of the date of this order, I order the strata to pay Daniel a total of $18,758.17, broken down as follows:
>
> a. $18,700.20 as reimbursement for special levy payments, and
>
> b. $57.97 in pre-judgment interest under the [*Court Order Interest Act*].
>
> b. Daniel is also entitled to post-judgment interest under the [*Court Order Interest Act*].

[17] The Strata seeks to quash the CRT's Decision.

STANDARD OF REVIEW

[18] The parties agree, and I conclude, that the standard of review is patent unreasonableness and that it applies to findings of fact, law, and exercises of discretion: *Civil Resolution Tribunal Act*, S.B.C. 2012, c. 25 (the "*CRTA*"), s. 56.7. This standard flows from the fact that the CRT has specialized expertise in strata claims: *CRTA*, ss. 116 and 121(2).

2023 BCSC 364 (CanLII)

[19] Patent unreasonableness is the most deferential standard of review. A decision is patently unreasonable where it contains an immediately obvious defect, which is "so flawed that no amount of curial deference can justify letting it stand" and almost borders on the absurd: *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52; *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, 2004 SCC 23 at para. 18.

[20] In conducting a review under the standard of patent unreasonableness, the court is not to ask itself whether it would have made the same decision as the tribunal or if it is persuaded by the tribunal's reasoning; rather, the court must ask whether, assessing the decision in its entirety, there is any rational line of reasoning which supports the decision, such that the decision is not clearly irrational. Even if the court considers parts of the tribunal's rationale to be flawed or unreasonable, so long as the decision as a whole is reasonable, no patent unreasonableness can be found: *Victoria Times Colonist Group Inc. v. Communications, Energy and Paperworkers*, 2008 BCSC 109 at para. 65, aff'd 2009 BCCA 229.

[21] Pursuant to s. 56.9 of the *CRTA*, a discretionary decision is patently unreasonable if the discretion:

a) is exercised arbitrarily or in bad faith;

b) is exercised for an improper purpose;

c) is based entirely or predominantly on irrelevant factors; or

d) fails to take statutory requirements into account.

[22] This approach recognizes that specialized tribunals routinely make decisions in their areas of expertise, and may therefore deliver reasons which appear counterintuitive to generalists: *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para. 13.

2023 BCSC 364 (CanLII)

PARTIES' POSITIONS

[23] The Strata alleges five errors by the CRT.

[24] First, the Strata argues that the CRT's finding that the special levy was approved on the date of the Second AGM was patently unreasonable. The Strata submits that the CRT failed to read the Second Resolution as a whole in its grammatical and ordinary text, contrary to the principles of statutory interpretation, leading to a clearly irrational and absurd result. The Strata says that a correct reading of the Second Resolution would interpret the words "that day" to mean that the special levy was due on the date of the First AGM because the Second Resolution was intended to retroactively approve the First Resolution.

[25] Secondly, the Strata submits that the CRT was patently unreasonable in ordering the Strata to reimburse Mr. Day, because the CRT did not declare that the resolutions from either AGM were invalid or unenforceable. The Strata says it was patently unreasonable for the CRT to depart from the group of previous CRT decisions which had considered practical implications relating to the strata's needs in the context of the COVID-19 pandemic.

[26] I will address the first two issues together.

[27] Third, the Strata argues that the CRT mischaracterized its position because the Decision stated that the Strata did not dispute the invalidity of the First Resolution. The Strata claims that it did not take a position on this issue.

[28] The Strata submits that the fourth error made by the CRT was that it also mischaracterized the Strata's position by saying that it was undisputed that the owners voted by restricted proxy at the First AGM. The Strata again argues that it did not take a position on this point in its submissions to the CRT.

[29] I will address the third and fourth issues together.

[30] Finally, the Strata submits that the CRT was patently unreasonable to infer from Mr. Day's conduct that he requested to waive the hearing requirement. The

2023 BCSC 364 (CanLII)

Strata says that the CRT wholly disregarded the *SPA* and created its own process, as there was no evidence that Mr. Day requested a hearing.

[31] Mr. Day takes the position that the CRT's interpretation of the Second Resolution was not patently unreasonable. He argues that the First AGM was invalid because no strata owners were permitted to attend or participate in discussions. Thus, since Mr. Day sold his lot prior to the Second Resolution's approval, the CRT's finding that he was not required to pay the special levy was also not patently unreasonable. Mr. Day also submits that the CRT acted reasonably in waiving the hearing requirement, as it was clear that a strata council hearing was unlikely to resolve the issues between the parties and because his email to the Strata president constituted a request. Mr. Day argues that the CRT appropriately exercised its discretion in accordance with its mandate to resolve disputes in an accessible, flexible, and informal manner.

[32] The CRT takes no position on the merits of the dispute.

DISCUSSION

[33] I will begin by addressing the Strata's allegations that the CRT mischaracterized its position. Then, I will discuss the CRT's waiver of the hearing requirement. Finally, I will assess whether the CRT was patently unreasonable in finding that the special levy was approved on the date of the Second AGM, thereby relieving Mr. Day from making the Payment.

Mischaracterization of Strata's Position

[34] At the outset, I dismiss the third and fourth errors alleged by the Strata; that the CRT mischaracterized the Strata's positions regarding the validity of the First Resolution and whether the owners voted by restricted proxy. Whether the CRT's findings are patently unreasonable is not dependent upon the position taken by the parties; rather, given the nature of the dispute, it was the CRT's role to make these findings of mixed fact and law. The CRT indeed thoroughly analyzed these

2023 BCSC 364 (CanLII)

questions at paras. 22-29 of the Decision. As I will discuss below, I find that the CRT's conclusions on these points were not patently unreasonable.

[35] Moreover, if the Strata did not take a position on the issue, then it was logical and rational for the CRT to infer that those points were undisputed.

Waiver of Hearing Requirement

[36] I find that the CRT was not patently unreasonable in inferring from Mr. Day's conduct that he had requested a waiver of the hearing requirement.

[37] Generally, an owner may not file a CRT dispute unless they have requested a strata council hearing in writing: *SPA*, ss. 189.1(2) and 34.1. In the Decision, the CRT found that Mr. Day did not expressly request a hearing. However, the *SPA* provides authority for the CRT to waive the hearing requirement on request: s. 189.1(2)(b). Accordingly, the CRT exercised its discretion to infer from Mr. Day's conduct that he requested a waiver. The Strata submits that this was patently unreasonable because inferring a request based on a party's conduct would render the waiver requirement null and void, leading to an absurdity.

[38] The principles of statutory interpretation are settled. They were summarized in *HMTQ v. Philip Morris International, Inc.*, 2017 BCCA 69 at para. 23, rev'd on other grounds 2018 SCC 36:

> [23] … The correct approach to statutory interpretation is long settled. It was recently expressed in *B.C. Freedom of Information and Privacy Association v. British Columbia (Attorney General)*, 2017 SCC 6:
>
> > [21] … This follows from the application of our long-accepted approach to statutory interpretation, namely that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 26, quoting both E. A. Driedger, Construction of Statutes (2nd ed. 1983), at p. 87, and *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21.
>
> [24] In *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, the Court said at para. 10:

2023 BCSC 364 (CanLII)

> [10] … The interpretation of a statutory provision must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the Act as a whole…
>
> [Emphasis added.]

[39] Section 34.1 of the *SPA* specifically dictates that a request for a council meeting must be made in writing:

> 34.1 (1)By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.

[40] Notably, s. 189.1(2)(b) does not specify how the request must be made to waive the request requirement:

> 189.1 (1) Subject to subsection (2), a strata corporation, owner or tenant may make a request under section 4 of the Civil Resolution Tribunal Act asking the civil resolution tribunal to resolve a dispute concerning any strata property matter over which the civil resolution tribunal has jurisdiction.
>
> (2) An owner or tenant may not make a request referred to in subsection (1) unless
>
> (a) the owner or tenant requested a council hearing under section 34.1, or
>
> (b) the civil resolution tribunal, on request by the strata corporation, owner or tenant, directs that the requirements of paragraph (a) of this subsection do not apply.

[41] It is accepted that the Legislature is presumed to understand principles of statutory interpretation. Thus, the fact that s. 189.1(2)(b) was silent on the method of request supports the proposition that the Legislature meant to give the CRT discretion to not require a written request and rely upon a party's conduct to infer a waiver request. This interpretation is also consistent with the statutory scheme and context created for the resolution of strata disputes; namely that s. 2(2)(a) of the *CRTA* specifies that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.

[42] Mr. Day cited authorities where the CRT had inferred from the applicant's conduct that they requested a waiver, taking into account the CRT's mandate and the unlikelihood that a council hearing would resolve the issues between the parties: *Wong v. The Owners, Strata Plan 1279*, 2021 BCCRT 1192 at paras. 12-13;

2023 BCSC 364 (CanLII)

Hallman v. The Owners, Strata Plan KAS 1821, 2021 BCCRT 1052 at paras. 11-13. CRT decisions are not precedential for the CRT nor this Court, but I find these decisions persuasive and adopt their reasoning, keeping in mind the CRT's specialized expertise in strata disputes. I conclude that the CRT's interpretation of the law – that it was entitled to infer a waiver request based on a party's conduct – is not patently unreasonable.

[43] The next question is whether the CRT's discretionary inference that a waiver had been requested by conduct was patently unreasonable. The Decision stated at paras. 15-17:

> 15. Daniel also says he emailed the strata council president and the strata's property manager "asking for his money back" and advising he would "complain" to the CRT…
>
> 16. … Here, I infer from Daniel's conduct in proceeding with this dispute that he asks for the CRT [to] waive the hearing requirement.
>
> 17. I have also considered the strata's position in conjunction with the CRT's mandate under section 2(2) of the CRTA… I find that refusing to resolve this dispute and referring the matter of a hearing back to facilitation, or to obtain further submissions from the parties, would be wasteful of the CRT's resources. Given that the strata does not dispute that the 1st AGM special levy vote was invalid, but disputes whether Daniel is entitled to a refund of $19,095.85 in special levy charges, I find it unlikely the parties will resolve the issues in this dispute at a council hearing. I also find the CRT's services would be unreasonably delayed, contrary to its mandate.

[44] I agree that requiring Mr. Day to request a hearing with the strata council at that point would have only served to waste the CRT's and the parties' time. The purpose of a strata council hearing, pursuant to s. 34.1 of the *SPA*, is to hear the applicant's complaints and to seek a decision of the council, in an attempt to resolve the issue without third party involvement. Given the history of these proceedings, it is evident that the parties have been unable to do so. If this Court or the CRT were to require Mr. Day to request a hearing with the Strata, Mr. Day would inevitably have to seek another hearing with the CRT. As articulated in the Decision, this would disregard the CRT's mandate to resolve disputes in an accessible and economical manner.

2023 BCSC 364 (CanLII)

[45] Additionally, I find the CRT's reliance on Mr. Day's conduct to be a rational line of reasoning which supports its decision to infer a waiver request. While Mr. Day did not request a hearing using those precise words, Mr. Day's email and subsequent phone call voiced his concerns to a Strata representative and explicitly put the Strata on notice that if the parties were unable to come to an acceptable resolution, he would initiate a CRT claim. The CRT has been expressly mandated to take an informal approach rather than to strictly adhere to technical requirements: *CRTA*, s. 2. This includes flexibly interpreting procedural rules, which a layperson is understandably unfamiliar with, particularly where the result of the waiver does not unduly prejudice the opposing party. Section 62(2)(d)(i) of the *CRTA* reflects this and provides tribunals with a broad mandate to make rules respecting practice and procedure, including the authority to waive or modify any rule in relation to a tribunal proceeding.

[46] Additionally, the Strata has also not brought forth any evidence that the CRT's discretionary decision was exercised arbitrarily or in bad faith, for an improper purpose, based on irrelevant factors, or that it has failed to take statutory requirements into account. Accordingly, I find that the CRT was not patently unreasonable in waiving the hearing request requirement.

Special Levy Approval Date and Reimbursement

[47] I find that the CRT was not patently unreasonable in concluding that the special levy was due and payable on the date of the Second AGM and ordering a reimbursement of the Payment to Mr. Day.

The First AGM was Invalid

[48] The CRT was reasonable in finding the First AGM invalid.

[49] Owners have the right to vote at strata meetings and may do so by proxy: *SPA*, ss. 54 and 56. The government of British Columbia provided that during the COVID-19 pandemic, stratas could allow for proxy voting or virtual attendance at meetings, as long as "the method permits all persons participating in the meeting to

2023 BCSC 364 (CanLII)

communicate with each other during the meeting": British Columbia, Minister of Public Safety and Solicitor General, *Ministerial Order No. M114*, Emergency Program Act, s. 2(2) ("Ministerial Order").

[50] The CRT correctly held that nothing in the *SPA* or the Ministerial Order authorizes stratas to restrict an owner's choice of proxy. It is vital for owners to be free to appoint a proxy of their choice, as a proxy not only has the power to vote on resolutions, but to also do anything that an owner can do at a meeting: *SPA*, s. 56(4). Consequently, the Strata's proxy voting procedure, which only allowed the owners to select either the Strata president or the building manager as their proxies, was a restricted proxy contrary to the *SPA*.

[51] Similarly, there was no defect in the CRT's finding that the proxy inappropriately restricted owners from participating in the First AGM, in direct contravention of the Ministerial Order. The First AGM precluded owners from discussing the merits and disadvantages of the special levy by encouraging owners not to attend physically, yet not providing for virtual attendance. The fact that the Strata held a town hall to discuss the resolution prior to the First AGM is insufficient to remedy this defect, as the Ministerial Order specifically stipulated that discussion must be allowed during the meeting. The CRT's finding that the First AGM was carried out by restricted proxy is thus not patently unreasonable.

[52] As a result of this conclusion, the CRT made a finding of mixed fact and law that the First Resolution was invalid: Decision, para. 29. The Strata acknowledged that the CRT has a narrow scope to make declaratory orders if it is incidental to a claim for relief: *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379 at para. 67. The Strata says that the CRT did not make it a term of its order that the First AGM or the First Resolution were deemed invalid, nor did it order the Strata to refrain from acting on the First Resolution. I agree. Consequently, the Strata argues, the First Resolution remained valid at all times, such that the Payment was due and payable by Mr. Day on February 25, 2021. On this point, I disagree.

2023 BCSC 364 (CanLII)

[53] I will first address the jurisdiction issue. In the Decision, the CRT said that it does not have jurisdiction to make declaratory orders: para. 32. The CRT did not mention *Fisher* for the proposition that it could make a declaratory order, in very narrow circumstances and only if it was ancillary to a claim for relief.

[54] Although CRT decisions are not binding on this Court, I find the reasoning in *Fisher* to be persuasive. The Vice Chair of the CRT, in coming to the conclusion that the CRT has a very limited jurisdiction to make declaratory orders, considered that such orders are based on equitable jurisdiction, which the CRT does not have. However, the Provincial Court, which also derives its jurisdiction from statute, has held that it may make declaratory orders where they are incidental to a claim for relief in which it does have jurisdiction: *Dalla Rosa v. Town of Ladysmith*, 2017 BCPC 178 at para. 28. *Dalla Rosa* was confirmed by this Court in *Grenier v. Williams*, 2020 BCSC 1827 at paras. 5 and 11.

[55] Much like the Provincial Court, the CRT has no jurisdiction beyond what is expressly granted or may be reasonably inferred from the *CRTA* or *SPA*. With respect to equitable remedies, a statutorily created decision-maker has “limited jurisdiction arising from necessary implication to deal with matters of procedure to ensure justice is done”: *Dalla Rosa* at paras. 23-24, 27. Section 123(1) of the *CRTA* provides the CRT with express authority to order a strata to do or stop doing something, or to pay money. In the case at bar, this includes the power to order the Strata to stop acting on the invalid resolution, or to refund Mr. Day’s Payment. In the particular circumstances of this case, the difference between ordering a party to refrain from acting on an invalid resolution and requiring repayment (as the CRT did in this case) and actually declaring that resolution invalid (which the CRT declined to do) has no practical distinction.

[56] It is certainly arguable that the CRT had jurisdiction to make a declaratory order that the First AGM was invalid, on the basis that such an order would be incidental to the reimbursement order because the two are inextricably intertwined. However, I do not find it necessary to definitively conclude whether the CRT had the

2023 BCSC 364 (CanLII)

jurisdiction to make such a declaratory order. In my view, even if the CRT erred in law by stating that it did not have the jurisdiction to order the First AGM invalid, the Decision would nonetheless not be rendered patently unreasonable. While it might have improved the clarity of the Decision to explicitly declare the First Resolution invalid or to explicitly order the Strata to refrain from acting on it, it is not necessary for the CRT to have done so in order for the First Resolution to have been found to be invalid and Mr. Day to be reimbursed.

[57] The patent unreasonableness inquiry requires an assessment of the entire Decision. The relevant paragraphs of the Decision state:

> [29] As noted, the parties do not dispute that the strata required the strata owner to vote by restricted proxy at the 1st AGM, which is contrary to the SPA. It follows that the resolutions approved at the 1st AGM are invalid.
>
> …
>
> [31] Daniel asks for an order that the 1st AGM be declared "legally invalid" and an order that the strata refund him $18,700.20 for special levy payments.
>
> [32] Declaring the 1st AGM invalid is a declaratory order the CRT does not have jurisdiction to make: see *Fisher v. The Owners, Strata Plan VR 1420*, 2019 BCCRT 1379. So, I decline to do so. However, under CRTA s. 123(1), the CRT does have jurisdiction to order a strata to do or stop doing something, or pay money, which could include ordering the strata to stop acting on the invalid special levy resolution, or to refund Daniel's special levy payments. I discuss appropriate remedies below.

[58] Thus, reading the Decision at paras. 29 and 32, together with the Order for the Strata to reimburse Mr. Day for the Payment, necessarily leads to the conclusion that the CRT found the First AGM and First Resolution invalid – otherwise, the Strata would not be required to reimburse Mr. Day. The CRT's finding of invalidity, even without a corresponding "declaration", provided a logical basis for the reimbursement order. I do not agree with the Strata's suggestion that the CRT must make a declaratory order that the First Resolution was invalid in order to give effect to the order that it reimburse Mr. Day for the Payment.

[59] I further reject the Strata's argument that once a resolution has been approved, regardless of whether it was correct or not, it remains binding until a CRT

2023 BCSC 364 (CanLII)

or court order provides otherwise. Rather, the First Resolution was no longer binding the moment it contravened the *SPA* or Ministerial Order.

[60] *Griffiths v. Section 1 of The Owners, Strata Plan VR2266*, 2022 BCCRT 1164 is a factually similar case, where an initial AGM, held in 2020 and voting on a special levy for a pool project, was invalidly held because it violated the Ministerial Order. A second meeting was held on April 19, 2021, to "ratify" the results of the first AGM, but the vote failed. An owner who had sold their lot on April 22, 2021, sought a refund of their special levy payment. The strata (referred to as the "section" in that decision) cancelled the pool project and agreed with the invalidity of the 2020 AGM, but a new section executive was elected and brought a CRT claim. The CRT held that the owners were entitled to a refund despite the lack of a formal declaration regarding the first AGM's invalidity:

> 31 … After the vote failed, I find that the section was legally obligated to refund the owners' special levy contributions. I find that this is true even though there had been no formal legal determination of the validity of the 2020 AGM. As of April 19, 2021, the applicants still owned SL22, so I find that they were the owners who were entitled to a refund under section 108(5).
>
> …
>
> 34 The section also argues that finding in favour of the applicants would lead to uncertainty and chaos in strata governance. The section says that owners should not be empowered to demand refunds of special levies based on a mere allegation that a general meeting was invalid. Instead, the section argues that owners should seek a court or CRT order first. Otherwise, the section fears that owners will use "creative" interpretations of the SPA to avoid their financial obligations. I do not agree with this argument. I find that the section acted appropriately in 2021 when it considered, and ultimately agreed with, the other owner's allegation about the validity of the 2020 AGM. Contrary to the section's argument, I find that it would be needlessly burdensome and impractical for a strata corporation (or section) to have to wait for a court or CRT finding before acting to correct past errors in its governance.
>
> [Emphasis added.]

[61] The CRT's reasoning in *Griffith* is compelling. An AGM can be deemed invalid absent a CRT order to that effect. It would be absurd to interpret the Decision and order so as to conclude that the First AGM was valid, when the CRT has concluded the opposite.

2023 BCSC 364 (CanLII)

[62] Further, the evidence demonstrates that the Strata understood the First AGM to be invalid; otherwise, the Second AGM would have been unnecessary. The President's Letter stated that the purpose of the Second AGM was to "remedy" and "correct" the potential irregularities of the First AGM. Moreover, the fact that no enforcement measures or fines were taken against owners who had yet to pay the special levy fees supports the inference that the Strata accepted the invalidity of the First AGM.

[63] Accordingly, there is nothing patently unreasonable in respect of the CRT's decision to find the First AGM and First Resolution invalid, notwithstanding the fact that the CRT only made this finding in the Decision and not in the order. Proceeding in this manner does not render the First Resolution valid.

The Special Levy Became Due and Payable After the Second AGM

[64] I reject the Strata's argument that the CRT's interpretation of the Second Resolution – that the special levy was due and payable on July 15, 2021, the date of the Second AGM – was clearly irrational and absurd.

[65] Section 109 of the *SPA* addresses the payment of special levies when a lot has been sold:

> 109 If a special levy is approved before a strata lot is conveyed to a purchaser,
>
> > (a) the person who is the owner of the strata lot immediately before the date the strata lot is conveyed owes the strata corporation the portion of the levy that is payable before the date the strata lot is conveyed…
>
> [Emphasis added.]

[66] As discussed, Mr. Day sold his lot on May 31, 2021. Thus, because the CRT found that the special levy was not approved until July 15, 2021, it also found that s. 109 does not apply to indebt Mr. Day to the Strata for the Payment.

[67] The principles of contractual interpretation apply to the analysis of a strata resolution. The modern approach was reaffirmed in *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53 at para. 47:

2023 BCSC 364 (CanLII)

> …the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine "the intent of the parties and the scope of their understanding" [citations omitted]. To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:
>
> No contracts are made in a vacuum: there is always a setting in which they have to be placed…
>
> [Emphasis added.]

[68] The Second Resolution states:

> This special levy of $2,250,000 is a ratification of the vote that was held on February 25, 2021 and was deemed due and payable on that date, and shall, upon ratification now become due and payable in full immediately on the passing of this resolution by the owners on title as at the end of **that** day and any owner who sells, conveys, or transfers his/ her title, or re-mortgages, before payment of this special levy is made in full, shall then pay the full amount outstanding.
>
> …
>
> By ratification of this resolution owners who have not yet paid the levy as passed in the AGM of February 25, 2021, no enforcement or interest measure will commence until August 1, 2021 though the full amount is due and payable as of May 1, 2021.
>
> [Bolding in original, underlining added.]

[69] According to the Strata, the words "that day" in the Second Resolution refer to February 25, 2021, and any other interpretation is absurd. Mr. Day conceded that this is one reasonable interpretation, but argued that the CRT's alternative interpretation was not patently unreasonable. I agree.

[70] To find the CRT's interpretation patently unreasonable, there must be an immediately obvious defect – suggesting that there can only be one reasonable interpretation of the Second Resolution. This is not the case. Another reasonable interpretation could be that the special levy is due and payable on May 1, 2021, per the underlined phrase.

2023 BCSC 364 (CanLII)

[71] It is also necessary to consider the context in which the Second Resolution was made. Even if the words were clear, a resolution cannot have an unlawful effect. It would be unlawful to allow for the Second Resolution to retroactively apply to Mr. Day – a former owner who did not have an opportunity to participate in discussions relating to the special levy purportedly established by the First Resolution – because such an interpretation contravenes the Ministerial Order. Moreover, it would be contrary to the *SPA* for Mr. Day to be liable for a special levy approved at the Second AGM which he was no longer entitled to attend or vote at. Thus, the CRT's interpretation that the Strata could not make Mr. Day responsible for the Payment approved at the Second AGM was not patently unreasonable, and Mr. Day is not liable for the Payment under s. 109 of the *SPA*.

[72] It is not necessary for me to address the issue of whether a strata can retroactively approve a resolution even though the Decision states that the Strata did not have authority under the *SPA* to do this: Decision at para. 40. I leave this discussion for another day because even if the Second Resolution could retroactively apply to other owners, it cannot apply to Mr. Day, who sold his lot prior to the Second AGM. It is only Mr. Day's liability for the Repayment that is at issue in this petition.

[73] Next, I will address the Strata's arguments that the CRT failed to consider the "practical implications" (such as financial difficulties) the Strata would face if the First AGM were found invalid. The Strata argued that the CRT was patently unreasonable in ignoring such practical implications. I reject this argument, because the fact that the Decision may place the Strata in a difficult financial position does not render it patently unreasonable.

[74] The Strata referred me to a number of CRT decisions where strata meetings were found to be held contrary to the Ministerial Order. In those cases, the CRT remedied the defect by holding a second AGM, finding it appropriate in those circumstances. The Strata says that while CRT decisions are not precedential, it is absurd for the CRT here to depart from this group of decisions. I find those cases

2023 BCSC 364 (CanLII)

factually distinguishable in material ways. Many of them do not involve special levies, which are distinct from typical strata expenditures. The Strata cited *Joyce v. The Owners, Strata Plan EPS3046*, 2022 BCCRT 891, which did involve a special levy. There, the CRT found the special levy invalid because the strata council was improperly elected. The CRT declined to reimburse the applicant his portion of the special levy because the financial status of the strata was not known to the CRT at that time. The CRT ordered the strata to call a special general meeting to reconsider the resolution.

[75] The key distinguishing feature in *Joyce*, and in all of the other cited cases, is that none of them involved an owner who had sold their strata lot in the intervening period. Moreover, ordering another meeting was an appropriate remedy in the cases relied upon by the Strata because the inability of those applicants to propose amendments, or to persuade their fellow owners to vote differently, could be resolved by holding a second AGM. The fact that the Second AGM was held in the case at bar does not assist Mr. Day because he was no longer an owner at that time and could not have participated in those discussions or in the vote.

[76] Based on the foregoing, I find that the CRT was not patently unreasonable in determining that the special levy was due and payable on July 15, 2021 – after Mr. Day had sold his lot. It is rational and tenable to conclude that Mr. Day cannot be bound by a resolution that he had no opportunity to participate in. Therefore, the CRT was not patently unreasonable in ordering the Strata to reimburse the Payment to Mr. Day.

DISPOSITION

[77] In conclusion:

a) the CRT was not patently unreasonable in waiving the hearing requirement; and

2023 BCSC 364 (CanLII)

b) the CRT was not patently unreasonable in finding that the special levy was approved at the Second AGM on July 15, 2021, thus having no application to Mr. Day, and ordering a reimbursement of the Payment.

[78] For these reasons, there is no basis for me to interfere with the Decision of the CRT. The petition is dismissed.

[79] Mr. Day is entitled to his costs from the Strata at Scale B.

"Majawa J."

2023 BCSC 364 (CanLII)